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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/964,488	09/28/2001	Jean-Louis H. Gueret	08048.0014-00	2767

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[REDACTED] EXAMINER

MANAHAN, TODD E

[REDACTED] ART UNIT [REDACTED] PAPER NUMBER

3732

DATE MAILED: 09/25/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	09/964,488	GUERET, JEAN-LOUIS H.	
	Examiner Todd E. Manahan	Art Unit 3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
  - 2a) This action is FINAL.      2b) This action is non-final.
  - 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.
- Disposition of Claims**
- 4) Claim(s) 1-166 is/are pending in the application.
    - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
  - 5) Claim(s) \_\_\_\_\_ is/are allowed.
  - 6) Claim(s) 1-166 is/are rejected.
  - 7) Claim(s) \_\_\_\_\_ is/are objected to.
  - 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.
 

If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
  - a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                    | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                           | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>5-7</u> . | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION*****Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 6, 7, 10-15, 19, 24-25, 29, 40-43, 45-57, 61, 62, 64-70, 74, 79-81, 84-86, 94-97, 99-112, 116, 117, 119-125, 129, 134-136, 139-141, 149-153, 155-166 are rejected under 35 U.S.C. 102(b) as being anticipated by Cloud (United Sates Patent No. 5,348,031).

Cloud discloses a device comprising a receptacle body defining a reservoir 24, and application element 32, a cavity 23 in flow communication with the reservoir, and a support element 30 on which the application element is mounted. The support element is mounted to pivot relative to the receptacle body between a first position wherein the application element is received in the cavity (figure 2) and a second position wherein the application element is at least partially exposed. Regarding the limitation in claim 1, that the reservoir is “configured to contain a product”, reservoir 24 could hold a product therein and thus is deemed to be so “configured”. The receptacle body is configured to be used as a handle (col. 3, lines 38-53). The support element is mounted via a film hinge 19.

Claims 1-4, 6-11, 13-33, 35-43, 45-59, 61-66, 68-88, 90-97, 99-114, 116-121, 123-143, 145-153, 155-166 are rejected under 35 U.S.C. 102(b) as being anticipated by Nian (United Sates Patent No. 5,382,107).

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Nian discloses a device comprising a receptacle body defining a reservoir 63 filled with a product, and application element 74, a cavity 64 in flow communication with the reservoir, and a support element 7 on which the application element is mounted. The support element is mounted via a spring-biased hinge so as to pivot relative to the receptacle body between a first position wherein the application element is received in the cavity and a second position wherein the application element is at least partially exposed.

Claims 1-4, 6-9, 11-16, 19-21, 24-30, 32-43, 45-59, 61-64, 66, 68-71, 74-76, 79-97, 99-114, 116-119, 121, 123-127, 129-131, 134-153, 155-166 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Cesari (United States Patent No. 3,741,667).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5, 60, and 115 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cesari.

To provide the device of Cesari with a sealing member, i.e. a gasket, would have been obvious to one skilled in the art in order to assure that no product will leak from the device when the support element is in the first position.

Claims 44, 98, and 154 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cesari in view of Landsman (United States Patent No. 4,056,110).

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Cesari discloses the invention essentially as claimed except for the head portion having the cavity being removably attached to the receptacle body, i.e. reservoir. Landsman discloses a similar device in which the head portion<sup>16</sup> is removably connected to the receptacle body and reservoir 10 so that the reservoir may be readily replenished when empty. It would have been obvious to one skilled in the art to removably attach the head portion to the receptacle body in view of Landsman in order to permit ready replenishment of toothpaste in the reservoir.

*Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Todd E. Manahan whose telephone number is 703 308-2695.

The examiner can normally be reached on Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on 703 308-2582. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308-0858.

Todd E. Manahan  
Primary Examiner  
Art Unit 3732

T. E. Manahan

16 September 2003